

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

FILED
CLERK U.S. DISTRICT COURT
DISTRICT OF DELAWARE
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IN RE:)	Chapter 11
)	Bankruptcy Case No. 04-12002 (CGC)
A.B. DICK COMPANY, et al.,)	
)	
Debtors.)	
_____)	
A.B. DICK COMPANY,)	
)	Adversary Proceeding No. 04-54141
Plaintiff,)	
)	Civil Action No. 05-00115-KAJ
v.)	
)	
MHR CAPITAL PARTNERS LP,)	
MHR INSTITUTIONAL PARTNERS LP,)	
and MHRM LP,)	
)	
Defendants.)	
_____)	
MHR CAPITAL PARTNERS LP,)	
MHR INSTITUTIONAL PARTNERS LP,)	
MHRM LP,)	
Third-Party Plaintiffs,)	
)	
v.)	
)	
N.E.S. INVESTMENT COMPANY;)	
ROBERT J. TOMSICH; JOHN H.)	
FOUNTAIN; A. KEITH DREWETT;)	
JOHN R. TOMSICH; FRANK D.)	
ZAFFINO; GREGORY T KNIPP;)	
JAMES W. WERT; JOHN KAHL, JR.;)	
DONALD HASTINGS;)	
BROWN, GIBBONS, LANG &)	
COMPANY, L.P. and)	
SQUIRE SANDERS & DEMPSEY)	
L.L.P.,)	
Third-Party Defendants.)	

MEMORANDUM ORDER

Before me is an unopposed motion to withdraw the reference (Docket Item

["D.I."] 1; the "Motion") filed by third-party defendants N.E.S Investment Company, Robert J. Tomsich, John H. Fountain, John R. Tomsich, Frank D. Zaffino, Gregory T. Knipp, James W. Wert, John Kahl, Jr., Donald Hasting, Brown, Gibbons, Lang & Company, L.P. and Squire Sanders & Dempsey L.L.P. (collectively, "Defendants"). Defendants' Motion requests that the reference of adversary proceeding number 04-54141 as to all claims asserted in the Plaintiffs' Third-Party Complaint be withdrawn from the U.S. Bankruptcy Court for the District of Delaware pursuant to 28 U.S.C. § 157(d). (D.I. 1 at 2.)

On August 18, 2004, a Third-Party Complaint was filed by MHR Capital Partners LP, MHR Institutional Partners LP, and MHRM, LP (collectively, "Plaintiffs") in the Bankruptcy Court claiming that Defendants are liable to them for violations of Sections 14(e) and 10(b) of the Federal Securities Exchange Act, 15 U.S.C. § 78j(b), and Rule 10b-5, 17 C.F.R. § 240.10b-5, and for fraud and negligent misrepresentation.¹ (D.I. 1, Memorandum in support of joint motion to withdraw the reference to the Bankruptcy Court, at 4.) On November 23, 2004, the present Motion was filed. (D.I. 1.)

In determining whether to grant or deny a motion to withdraw the reference, "this Court will consider ... whether withdrawal would serve judicial economy, such as the goals of promoting uniformity in bankruptcy administration, reducing forum shopping and confusion, fostering the economical use of the debtors' and creditors' resources, and expediting the bankruptcy process." *NDEP Corp. V. Handl-It, Inc. (In re NDEP*

¹On December 28, 2004, the Bankruptcy Court determined that "the proceedings for which withdrawal of the reference is sought are non-core proceedings." (D.I. 52, Bankruptcy Court's record, at 2.)

Corp.), 203 B.R. 905, 913 (D. Del. 1996). Considerations of judicial economy favor withdrawal. Because it is conceded that Defendants are entitled to a jury trial, it appears more efficient for this court to manage the case through the pretrial process. *Cf. NDEP*, 203 B.R. at 913 (quoting *Gumport v. Growth Fin. Corp. (In re Transcon Lines)*, 121 B.R. 837, 838 (C.D. Cal. 1990)) ("Due to the fact that a District Court Judge must eventually preside over the jury trial in this matter, it would constitute a tremendous waste of judicial resources to permit the bankruptcy judge to continue to maintain jurisdiction over the issues presented in this litigation.").

Accordingly, IT IS HEREBY ORDERED that Defendants' Motion to withdraw reference (D.I. 1) is GRANTED and the reference of the above Adversary Proceeding Number 04-54141 as to all claims asserted in the Plaintiffs' Third-Party Complaint is WITHDRAWN.

July 5, 2005
Wilmington, Delaware


UNITED STATES DISTRICT JUDGE